86-356

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term. 198_____

In Re: Donald G. Tracy,
Appellant,

-vs-

National Bank of Detroit,
William Baldwin,
David M. Davis,
5 John Does, 5 Jane Does,
Appellees.

ON COMMON-LAW WRIT OF PROHIBITION
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

# JURISDICTIONAL STATEMENT

DONALD G. TRACY
SUI JURIS
P.O. BOX 1935
JANESVILLE, WI 53547

NO._____

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## QUESTIONS PRESENTED

1. Were the rights of appellant violated by the Appeals Court and the District Court of Wisconsin, a court which is bound to execute an act repugnant to the Constitution of Wisconsin and the United States Constitution (Eakin v. Raub, 12 S & R (Pa.) 345, when they failed to give appellant a trial by jury pursuant to state and federal and contractual law.

2. Was the due process rights of the appellant violated when the District Court and the Court of Appeals violated the United States Constitution and the Wisconsin Constitution summarily and arbitrarily denied a trial by jury without, as a minimum, a hearing, when the pleadings contain positive proof, that the allegations in the conplaint are valid.

3, Has the right of appellants to the right to contract been denied

by the Court of Appeals, who protected and clothed the District Court with the power to annul or evade the state and federal constitution by the denial of a trial by jury and the right to contract on the fact of overwhelming evidence, against appellants will and over his objections.

4. Were the rights of the appellant violated by the estopple and denial of a trial by jury which was demanded by the appellant.

5. Were the rights of the appellant violated by the summary denial of the right to contract without affording appellant the opportunity for a hearing when the evidence is beyond any reasonable doubt.

6. Were the property rights (to submit an action and have a remedy) of appellants violated by the arbitrary summary denial of trial by jury when it is the only remedy for a violation at law.

7. Were the rights of appellant violated by the arbitrary and summary denial of trial by jury and right to contract because the Appeals Court failed to compel the District Court to perform in accordance with a constitutional provision, a plain and palpable violaton of the constitution.

8. Were the rights of the appellant violated by the estopple because the District Court failed to comply with the mandate of the state and federal constitution of the right to trial by jury, a plain and unlawful violation of the constitution.

9. Has the District Court and the Appeals Court violated appellants Common-Law right as a United States Citizen de jure and a Free Citizen of Wisconsin who has rescinded all contracts with both state and federal government.

## LIST OF PARTIES TO PROCEEDINGS WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Circuit Judge, Harlington Wood, Jr.

Circuit Judge, John L. Coffey

Circuit Judge, Kenneth F. Ripple

District Judge, John Shabaz

David M. Davis, Attorney for General Motors

The relief sought in this case is not available in any other court as this is the Original Court of Jurisdiction pursuant to the United States Constitution in Common Law.

Appellant has exhausted all the other courts before he became a Sovereign Citizen of Wisconsin and of the United States.

If appellant cannot get relief in this court at law he will be denied due process pursuant to the Constitution, and his property taken from him in violation of his rights.

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## ORDERS AND DENIALS BELOW

The order of the Appeals Court and the denials of the District Court are reporduced herein as Appendix A B C D.

## GROUNDS OF JURISDICTION OF SUPREME COURT

This Common-Law Writ of Prohibition arises from the denial of a trial by jury which was summarily denied, without a hearing, by both the District Court and the Appeals Court. The dismissal order of the District Court was entered on the 10th day of October, 1985. The order of the Appeals Court affirming this dismissal was entered May 13, 1986 along with the court order. An order denying appellants Motion For Leave To File Instander A Petition For Rehearing was filed June 23, 1986. A copy of these orders are reproduced herein as Appendix A B C D.

A Notice of Writ to the Supreme Court of the United States is filed timely on the 7th day of July, 1986,

with the clerk of courts of the Appeals Court for the Seventh Circuit. A Copy is reproduced herein as Appendix E.

Appellant submitted a Common-Law Writ of Prohibition timely to the Clerk of the Supreme Court of the United States (certified, return receipt requested).

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. 1651, First Amendment of the Bill of Rights, and Article III, Sec. 1 & 2-1.

## APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

Article IV, Sec. 2-1 of the U.S. Constitution states:

> "The Citizens of each state shall be entitled to all privileges and immunities of Citizens in the several states."

Fifth Amendment to the Constitution reads, as follows:

> "...not be deprived of life, liberty, or property, without due process of law;..."

Article I, Sec. 10-1 states in part:

> "No State shall... pass any Bill

of Attainder, ex post facto Law, or law impairing the Obligation of Contracts, or grant any Title of Nobility."

Preamble to the U.S. Constitution:

"WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domistic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and to our Posterity, do ordain and establish this Constitution for the United States of America."

Article VI of the U.S. Constitution

says in part:

"In Suits at common law, where the controversy shall exceed twenty dollars, the right of trial shall be preserved,..."

Article IX of the U.S. Constitution

states:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

X Amendment to the U.S. Constitution

states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States

are reserved to the States, respectively, or to the people."

Article I. Sec. 5 of Wisconsin Constitution states:

"The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy;.."

Article I, Sec. 12 of Wisconsin Constitution says:

"No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate."

28 U.S.C. 1652 states:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Article VI,Sec. 2 of the U.S. Constitution states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of

the United States, shall be the SUPREME LAW OF THE LAND; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

## STATEMENT OF THE CASE

This case arises from a breach of contract suit brought on by the appellant against the appellees which was filed in the District Court for the Western District of Wisconsin. This suit was dismissed without a trial by jury as previous cases had been dismissed by Judge Shabaz.

The appellant was denied a substitute judge by the presiding judge himself and the same judge dismissed himself from a suit brought on by the appellant.

The suit then proceeded to the Seventh Circuit Court of Appeals where the lower courts decision was affirmed.

An estopple was placed against the appellant in violation of appellants First Amendment rights to redress the government for grievances.

Appellant filed for a redetermination of the decision but this also was denied on June 23, 1986.

Jurisdiction was invoked in the district court under F.R.C.P. 1652, 1331, 1343(3), 42 U.S.C. 1983 and U.S. Constitution Article. 3, Sec. 2-1.

ARGUMENT

The appellant in this action has clearly exhausted all other remedies, therefore, the complaint should have been remanded back to the district court for trial by jury and judgment against appellees National Bank of Detroit and William Baldwin as they did not answer the complaint and appellee Davis did not file an appearance on behalf of these appellees as was brought out by the appellant and remarked on by the Court of Appeals although no action was taken on the matter.

The District Court and the Court of Appeals have failed to take into

consideration that "What qualifies as "property and rights to property" upon which the government has a tax lien is to be determined by state law." United States of America v. Sullivan et al 333 Fed. Rep. 2d.

State Law of Wisconsin § 815.18(31) has determined that employee retirement benefits are not to be levied, attached, garnisheed, etc.

UAW and General Motors contract state the pension benefits cannot be alienated, assigned, pledged or encumbered EXCEPT FOR QUALIFIED DOMESTIC RELATIONS. Copy is reproduced as Appendix F.

In Brooks v. Penn R. Co., 91 F. Supp. 101 it states:

> "under the Rules of Civil Procedure there is no pleading requirement that there be facts sufficient to constitute a cause of action but only that there be "a short and plain statement of the claim showing that the pleader is entitled to relief" (Rlue 8(a), 28 USCA, F.R.C.P.

Appellant asked for an injunction against the bank and its employees from violating the contract and stop seizing appellants pension in violation of the contract and state and federal statutes.

Appellees knew that when they alienated appellants pension the check showed this alienation by the heading on the checks which read:

> "Pension Trust General Motors Hourly-Rate Employes Pension Plan Pursuant To The Agreement Between General Motors And UAW"

This heading was omitted when appellees alienated appellants pension. Copy is reproduced as Appendix G and H.

The President derives his powers from Art. II, Sec. 1 of the U.S. Constitution, "The President shall.. take the following Oath or Affirmation: 'I do solemnly swear that I will....preserve, protect and defend the Constitution of the United States.' This means that the President gets his authority from and is bound by this Constitution.

Art. VI, Par 3 provides: "...all executives and judicial officers,...shall be bound by Oath of Affirmation to support this Constitution..." The judicial powers are given in Art. III, Sec. 2. So judges also get their authority from and <u>are bound by</u> the Constitution.

All public servants (government officials) derive their authority from and <u>are bound by</u> the Constitution. Where does the Constitution get its authority? The first three words of the Constitution tell us. "WE THE PEOPLE".

We the people are the BOSS, and in our contract, called the Constitution of the United States of America, we have laid down the rules under which all public servants must operate. We have also specified the protections which these public servants must honor, in order that "liberty and justice <u>for all</u>" shall prevail.

In Edward v. Kearzy, 96 US 595, 607,

24 L.Ed. 793 the court said:

> "...any subsequent law which so effects the remedy as substantially to impair and lesson the value of the contract is VOID."

1 In Ohio Life Ins. & Trust Co. v. Debolt 16 How (US) 416, 14 L.ED 997

Chief Justice Taney said:

> "It will be admitted on all hands, that with the exception of the powers surrendered by the Constitution of the United States, the people of the several States are absolutely and unconditionally SOVEREIGN within their respective territories." and

he said:

> "It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States, and over which this court has no control. For it can never be maintained in any tribunal in this country, that the people of a state, in the exercise of the powers of sovereignty, can be restrained within the narrower limits then those fixed by the Constitution of the United States, upon the grounds that they may make contracts ruinous or injuries themselves."

and he further said:

> "Yet, if the contract was within the scope of the authority conferred by the constitution of the State, it

is like any other contract made by competent authority, binding upon the parties. NOR CAN THE PEOPLE OR THEIR REPRESENTATIVES, BY ANY ACT OF THEIRS AFTERWORDS, IMPAIR ITS OBLIGATION. When the contract is made, the Constitution of the United States acts upon it, and declares that it shall not be impaired, and makes it the duty of this court to carry it into execution. That duty must be performed.

And:

"And the sound and true rule is, that if the contract, when made, was valid by the laws of the state, as when expounded by all the departments of its government, and administered in its courts of justice, its validitiy and obligation CANNOT BE IMPAIRED BY ANY SUBSEQUENT ACT OF THE LEGISLATURE of the state, or decision of its court, <u>altering the consideration in the law</u>."

Justice Swayne delivered this opinion of the court in Edward v. Kearzy supra:

"The Constitution of the United States declares that "No State shall pass any*** law impairing the obligation of contracts." A contract is an agreement of minds, upon a sufficient consideration, that something specified shall be done, or shall not be done. The lexical definition of "impair" is "to make worse; to diminish in quanity, value, excellence or strength; to lesson in power; to weaken; to enfeeble; to deteriorate." Webster Dic. "Obligation" is defined to be "the

act of obliging or binding; that which obligates; the binding power of a vow, promise, oath or contract," etc. Webster Dic.
"The word is derived from the Latin word obligatio, tying up;..." "The obligation of a contract includes every thing within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in view of the law, ceases to be, and falls into the class of those "imperfect obligations," as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The idea of right and want of remedy are inseparable. "Want of right and want of remedy are the same thing."

The court further said:

"These rules are axioms in the jurisprudence of this court." "... The power to tax is the powere to destroy. McCulloch v. Md., 4 Wheat, 416.
"The power to modify at descretion the remedial part of a contract is the same thing."
"We think the views we have expressed carry out the intent of contracts and the intent of the Constitution. The obligation of the former is placed under the safeguard of the latter. No State can invade it; and Congress is incompetent to authorize such invasion. Its position is impregnable, and will be so while the organic law of the nation remains as it is. The trust touching the subject with which this court is charged is one of magnitude and delicacy. We must always be careful

to see that their is neither non-feasance nor misfeasance on our part."

It is apparent that the Justice system in the past was filled with men of character, honesty, and integrity. It is also apparent the courts of today are lacking in these virtures.

There is no question here that a breach of contract has taken place in this case and the District Court and the Appeals Court have not looked to the United States Constitution for their decisions in this case, but, have instead used case law and rules which are contrary to the laws of the United States Constitution.

The appellees, District Court of Wisconsin and the Appeals Court for the Seventh Circuit have refused to state the law which says that 26 USC or URISA SUPERSEDES THE United States Constitution or the Wisconsin Constitution although they have used these rules

to breach the contract and seize appellants pension.

Appellant states a Sheriff's notice of sale is not a Sheriff's sale so it would be reasonable to say a notice of levy is not a levy. However, this notice was all that was used to breach the contract.

The appellant in this case has filed rescission papers with the following government agencies:

1. Secretary of Treasury
2. U.S. Dept. of Commerce
3. Commissioner of Social Security
4. Secretary of Health & Human Service
5. Wisconsin Dept. of Revenue
6. L. Phillips, I.R.S.
7. I.R.S. Regional Director
8. Commissioner of I.R.S.
9. Wis. Dept. of Human Resources
10. State Director of Health & Human Resources
11. Attorney General Bronson La Fallette
12. Wis. Dept. of Transportation
13. Wis. Governor Anthony Earl
14. Motor Vehicle Dept. of Records
15. President Ronald Reagon
16. Register of Deeds, Iowa

Appellant has rescinded ALL his CONTRACTS with the State and Federal Government. Appellant has claimed his

Common Law Status as a Citizen of the United States de jure and a Free Citizen of the State of Wisconsin. As the appellant is a Free, White Wisconsin Citizen and a United States Citizen de jure with inalienable rights and sovereign therefore appellant is no longer a corporate entity pursuant to the maritime/admirlity laws and is no longer under the 14th Amendment jurisdictoin. Corporate / admirality/maritime laws no longer apply to the appellant.

Appellant filed these rescission papers pursuant to his right under the Preamble to the United States Constitution as found in the following cases:

> McCulloeh v. Maryland, 4 Wheat 316 (1819); Chishlom v. Georgia, 2 Dall. 419, 470 (1703); Penhallow v. Doane, 3 Dall. 54, 93 (1795); Martin v. Hunter, 1 Wheat 304, 324 (1816); Barron v. Baltimore, 7 Pet. 247 (1833) and Scott v. Sanford, 19 How. 393, 404 (1857).

The Preamble contemplates the body of electors composing the States, the terms "people" and "citizens" being

synomymous.

Negros, whether free or slaves, were not included in the term "people of the United States" at that time.

This rescission took place June 25, 1986 and appellant is no longer under any obligation to perform for the government (either state or federal) as he receives nothing from them (including social security as he has rescinded this contract and is no longer a "taxpayer" pursuant to admirality law) and therefore owes nothing to the government.

Appellant is no longer under the 14th Amendment maritime jurisdiction.

Appellant has through new evidence found that he has the RIGHT to this status by his heritage through his forefathers as a Co-Heir to the Preamble to the United States Constitution which is also his inalienable/Unalienable Right. A copy is reproduced as Appendix I showing appellants Affidavit, Declaration

& Filing of A Natural United States

Citizen and witnessed by three people.

( "... at the mouth of two witnessess, or at the mouth of three witnesses, shall the matter be established." Deuternomy 19:15.)

Definition of Rescission as found in Black's Law Dictionary 5th Ed. is as follows:

> "A 'rescission' amounts to the unmaking of a contract, or an undoing of it from the begining, and not merely a termination, and it may be effected by mutual agreement of parties, or by one of the parties declaring rescission of contract without consent of other if a legally sifficient ground therefor exists,.." Abdullah Inc. v. Martin, 242 Minn. 416, 65 N.W. 2d 641, 644. "Annulling abrogation or unmaking of contract and the placing of the parties to it in status qup. Sessions v. Meadows, 13 Cal. App. 2d, 748, 57 P 2d 548, 549. It necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. An action of an equitable nature in which a party seeks to be relieved of his obligations under a contract on the grounds of mutual mistake, fraud, imposibilty, etc."

In Status Quo is defined as:

> "Lat: in the existing situation or condition. IN STAUS QUO ANTE in a contract means "being placed

> in the same position in which a party was at the time of the inception of the contract which is sought to be rescinded." 28 P. 764, 767.

Because of the constructive fraud connected with the Social Security Insurance Co. appellant has rescinded all further contracts with them and no longer holds their policy or their card.

## CONCLUSIONS

The record clearly established that:

1. In District Courts of the state the state law is regarded as rules of decision in civil actions.

2. Wisconsin Statute 815.18(31) has determined employee pensions cannot be assigned, levied, attached, garnisheed, etc.

3. The contract between the UAW and General Motors states a pension cannot be assigned, transfered, alienated etc.

4. Appellant was and has been in the past denied a trial by jury by the

District Court and the Appeals Court.

5. Judge Shabaz did dismiss an action against himself in violation of both state and federal law.

6. Appellant is no longer a 14th Amendment citizen and is no longer under that admirality/maritime jurisdiction.

- - - - - - - - - - - - - - - -

Appellant is aware that the Court normally will not decide constitutional issues. However, the issue before the court is not one pertaining to the constitutionality of the acts complained of or of tax matters.

In this case the appellant has been denied his 'day in court'; he has been denied an action to prevent constitutional violations; appellant has been denied a hearing before a jury which is a right under both state and federal constitutions and is not an act of discretion by the courts.

Appellant believes the lower courts have committed Malum prohibitum against

him for judges are presumed to know the law and the very wording of the courts orders show they are contradictory without merit and void of any statutory law to substantiate their decisions.

When the lower courts refuse to even hear an issue concerning a breach of contract because it involves a levy the Supreme Court must intercede and order these courts to protect the rights of all citizens of this state who are receiving pensions.

Therefore, the United States Supreme Court must exercise its jurisdiction in this case or lawlessness will reign supreme in Wisconsin as it has been doing in the past. If this court refuses to hear this case then the Constitution of the State of Wisconsin needs to be pronounced dead with no law in this state.

> "And I will restore thy judges as at the first, and thy counsellors as at the begining:..." Isaiah 1:26

The courts in Wisconsin are corrupt and these instances are not exaggerations, but are such as occur every day and such as may be expected to continue in the future unless some effective method is derived to curb these judicial activities. The warning was sounded in the scholarly address delivered in the meeting of the State Bar Association for Wisconsin by President J.G. Hardgrove in 1931.

The situation which now confronts us would not exist if we had not turned a deaf ear to the Constitutional mandates. § 9 Article 1 of the Wisconsin Constutution provides:

> "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely, an without being obliged to purchase it, completely and without denial, promptly and without delay, comformably to the laws."

We need not labor the point that

a person is not given a remedy in the laws and does not obtain justice conformably to the laws when he is deprived of the opportunity to have the findings of fact reviewed in the courts. A great deal of difficulity and confusion in this respect might have been avoided had greater attention been paid to the provisions of § 22 of Article 1 of the Wisconsin Constitution , which provides:

> "The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virture, and by frequent recurrence to fundamental principles."

The conclusion that a Writ of Prihibition after the findings made by this court is, of course, bottomed upon the porvisions of § 1 of Article I of the Wisconsin Constitution which has been held to be the equivalent of the due process clause of the Federal Constitution (Pauky v. Keebler, 175 Wis. 428) and of the V Amendment of the United States Constitution which has

the federal due process clause.

Appellant believes the United States Supreme Court should remand this case back to the District Court for a trial by jury at law or in the alternative based upon the information on contracts and the status of the appellant along with the mandate of the United States Constitution and the Constitution of Wisconsin reverse the decision of the Appeals Court.

Dated this 7th day of July, 1986.

Respectfully Submitted,

Donald Tracy

Donald G. Tracy
SUI JURIS
P.O. Box 1935
Janesville, Wi 53547

CERTIFICATE OF SERVICE

I, the undersigned, do hereby affirm that I delivered a true and correct copy of the foregoing document on the 7th day of July, 1986, by depositing in the U.S. mail, fully postpaid to Judge H. Wood, Jr., Judge J. Coffey, Judge K. Ripple, Judge J. Shabaz & David M. Davis.

Donald Tracy
Donald Tracy

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

---

DONALD G. TRACY,

Plaintiff,

v.

ORDER
85-C-898-S

NATIONAL BANK OF DETROIT,
et al.,

Defendants.

---

Plaintiff filed this complaint on September 20, 1985. He claims that the defendants illegally allowed seizure of his benefits by the Internal Revenue Service. On October 9, 1985, one of the defendants filed a letter motion to dismiss this case because plaintiff has already litigated this claim.

In Case No. 83-C-608-S, this Court dismissed plaintiffs' claim against the National Bank of Detroit with prejudice. Plaintiff's Case No. 85-C-201-S was dismissed because the claim was indentical to the one litigated in Case No. 83-C-608-S.

The present case is identical to plaintiff's two previous cases and will be dismissed because it is without merit.

ORDER

IT IS ORDERED that this case is DISMISSED.

Entered this 10th day of October, 1985.

BY THE COURT:

APPENDIX A

Copy of this document
has been mailed to the
following: Pltf.
Tracy and Atty. Davis
this 10 day of October,
1985

By_____
Secretary to Judge John C. Shabaz

_____
JOHN C. SHABAZ
District Judge

JUDGMENT-WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

May 13, 1986.

Before

Hon. HARLINGTON WOOD, JR Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

DONALD G. TRACY,
Plaintiff-Appellant,

No. 85-2820

vs.

NATIONAL BANK OF DETROIT,
WILLIAM BALDWIN,
DAVID M. DAVIS,
5 JOHN DOES and
5 JANE DOES,
Defendants-Appellee.

Appeal from the United States District Court for the Western District of Wisconsin.
No. 85 C 898
John C. Shabaz, Judge

This cause came before the Court for decision on the record from the United states District Court for the Western District of Wisconsin, _____ Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District in this cause appealed from be, and the same is hereby AFFIRMED, with costs in accordance with the order of this Court entered this date.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

(Submitted April 9, 1986)* UNPUBLISHED
May 13, 1986. ORDER NOT TO BE CITED PER CIRCUIT RULE 35

Before

Hon. HARLINGTON WOOD, JR., Circuit Judge
Hon. JOHN L. COFFEY, Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge

DONALD G. TRACY,
Plaintiff-Appellant,
No. 85-2820

vs.

NATIONAL BANK OF DETROIT, WILLIAM BALDWIN, DAVID M. DAVIS, 5 JOHN DOES, 5 JANE DOES,
Defendant- Appellee.

Appeal from the United States District Court for the Western District of Wisconsin No. 85 C 898
JOHN C. SHABAZ
Judge

ORDER

I

Plaintiff, Donald Tracy, is a former employee of General Motors (GM) who now receives a pension based on that

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as

to Need of Oral Argument." See Rule 34(a), Fed. R. App. P; Circuit Rule 14(f). Plaintiff-Appellant filed such a statement, requesting oral Argument. Upon consideration of that statement, defendant-appellee Davis's "Suggestion for Affirmation without Oral Argument," the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

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employment.[1] DEfendant, National Bank of Detroit (Bank), is the trustee of the pension fund; William Baldwin is an employee of the Bank; and David Davis is an attorney (employed by GM) who has represented and advised the Bank concerning the pension fund. Amounts have been withheld from Tracy's pension checks pursuant to a levy by the Internal Revenue Service (IRS). Tracy claims that the levy was improperly imposed pursuant to inapplicable federal statutes and without a court order. He claims that the Bank and Baldwin violated the pension contract, various federal statutes, and a state statute by honoring the levy. He further claims that Davis conspired with the two other defendants by giving them information and acting as their lawyer. There are no alligations in the complaint concerning the John and Jane Does. Tracy seeks injunctive relief from furhter harrassment and $100.000 damages from each defendant.

This is not Tracy's first suit concerning this subject. In July 1983 he filed a similar suit naming the Bank, GM, and a number of their employees (not including Baldwin or Davis unless they were a "John Doe"). A later amendment added an IRS employee as a defendant. The district court dismissed all the defendants, except the IRS employee, on a motion for summary judgment. The court found that GM and its employees were not required to pay pension benefits and therefore could not be liable to Tracy. The court held that the Bank was required, pursuant to the Internal Revenue Code and the Employee REtirement Income Security Act of 1974 (ERISA), to honor the levy and therefore did not act wrongfully. This court dismissed an appeal of that order because it was an interlocutory appeal not properly certified pursuant to Fed. R. Civ. P. 54(b). The claim against the IRS employee was apparently dismissed at a later time and there is no indication of a further appeal.

In March 1985, Tracy filed a second suit concerning the levy on his pension. This time he only named Baldwin as a defendant. The District court found that this claim was identical to the one in the first suit, except that it named a different employee as a defendant. Finding

furtherthat its "decision reached in [the first suit] makes the [second] case without merit," the district court dismissed the second suit on its own motion in March 1985. There is no indication that that decision was appealed.

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1. In describing the facts in this case we construe plaintiff's pro se complaint liberally and assume that all the factual allegations contained therein are true. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972)(per curiam).

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The present suit was filed in September 1985. In response to receiving the summons and complaint, Davis [2] sent a letter to the district court attaching copies of the orders entered in the first two suits. In his letter he stated he and Baldwin were Michigan residents and that the Bank was located in and doing business in Michigan. "Thus, I do not believe this Court has jurisdiction over the named defendants." He also requested that the complaint be dismissed based on the proir court orders. The district court's October 10 order stated the "The present case is identical to plaintiff's two previous cases and will be dismissed because it is without merit".

II

A

On appeal, the defendants present

there grounds for affirming the district court judgment: lack of personal jurisdiction, collateral estopple, and failure to state a claim upon which relief can be granted. Ordinalily, we should xecide the jurisdictional question first. See Northwestern National Casuality Co. v. Global Moving & Storage, Inc., 533 F 2d 320, 323 (6th Cir. 1976); Scullin Steel Co. v. National Railway Utilization Corp., 520 F. Supp 383, 388 (E.D.Mo. 1981) aff'd, 676 F 2d 209 (8th Cir. 1982); Wright & Miller, Federal Practice & Procedure; Federal Rules of Civil Procedure § 1351 at 563 (1969). Defendants argue that there is no personal jurisdiction because process was not possible under the Wisconsin long-arm statute, Wis. Stat. § 801.05, which is allegedly applicable, through Fed. R. Civ. P. 4(c)(2)(C)(i). The facts necessary for deciding that issue were never presented below and therefore this court is in no position to decide that issue, but it does not matter because ERISA provides for nationwide service of process for claims like plaintiff's. See 29 U.S.C. § 1132 (e)(2); Rodd v. Region Construction Co.,783 F 2d 89, 91 (7th Cir. 1986). If petitioner's brief can still be construed as arguing that the district court in Wisconsin were not present, see Varsic v. United States District Court for the Central District of California, 607 F 2d

245, 248-50 (9th Cir. 1979), we would again be prevented, by a lack of factual development, from deciding the issue.

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2. In the district court, Davis never filed an appearance on behalf of the other defendants. On appeal he has made arguments on behalf of all the defendants, but lists himself as the attorney for the "defendant-appellee" GM, even though GM is not a party to the present case. While it is preferred that the defendant file only brief, see Fed. R. App. P. 28(i), the attorney should also adequately specify who he is representing.

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But we need not remand the case to the district court for such development, because we can affirm the district court opinion on other adequate grounds. See O'Neill v. Dell Publishing Co., 630 F 2d 685, 690 (1st Cir. 1980)(need not reach personal jurisdiction issue because claims can clearly be dismissed based on collateral estopple); W.H. Elliott & Sons Co. v. Nuodex Products Co., 243 F 2d 116, 119 (1st Cir.), cert. denied, 355 U.S. 823 (1957) (as a matter of convienience, district court can dismiss complaint for failing to state a claim instead of first holding an evidentiary hearing on personal jurisdiction.

B

Under the doctrine of res juricata, a decision in an earlier action will

constitute a complete bar to a later action if (1) the parties to the later suit are the same or in privity with those in the earlier suit, (2) the later suit alleges the same cause of action as the earlier suit, and (3) a court of competent jurisdiction entered a valid final judgment on the merits in the earlier suit. Cannon v. Lovola University of Chicago, No. 85-1987, slip op. at 4 (7th Cir. Feb. 25,1986). Basing relief on the same facts but a changed theory of relief will not prevent the application of res judicate. Id. at 4-5. Although Tracy complains that he never received a jury trial on his claims, dismissal on summary judgment is a dismissal on the merits. Cf. id. at 5 (dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6) is a dismissal on the merits). Since the Bank was a party to the first suit, and Baldwin a party to the second suit, the claims against those two defendants are precluded by the doctrine of res judicata.

Davis was not a party to the earlier suits. We need not decide if he was in privity with earlier defendants so that res judicata would apply, because we find that collateral estopple precludes the claims against Davis. See Beard v. O'Neal, 728 F 2d 894, 896-98 (7th Cir.), cert. denied,105 S.Ct. 104 (1984)(privity require-

ment applies to res judicata, but not collateral estopple). The requirements for applying collateral estopple are: (1) there has been a final determination on the merits; (2) the resolution of the issues precluded were necessary to the decision in the first case; (3) the party against whom estopple is asserted was a party to the prior case and had a full and fair opportunity to litigate the issue; and (4) the issues in both cases are indentical. Garza v. Henderson, 779 F 2d 390, 393 (7th Cir. 1985). These requirements are all met. Plaintiff has alleged no facts that differentiate the claims against Davis from those against other defendants who have been dismissed. Although plaintiff complains that his prior suits did not reach the state of a jury trial, there is no indication that he was denied a full opportunity to litigate his prior suits. See Moore, Lucas, & Currier, Moore's Federal Practice 0.441[3.3](2d ed. 1984). Tracy is precluded from pursuing his claims against Davis.

III

Plaintiff has litigated the same issue three times in the district court and lost each time. The district court did not impose a penalty on plaintiff in any of the three cases. See, e.q. Fed. R. Civ. P. 11. We find the present appeal

to be frivolous and in bad faith; the doctrines of res judicata and collateral estopple are well established and plaintiff has already been told three times that he has no cognizable claim. We consider, though, that the defendants have not requested damages under Fed. R. App. P 38. However, further appeals to this court on frivolous issues will almost certainly result in a greater cost to plaintiff. See United States v. Dack, 747 F 2d 1172, 1176 n.5 (7th Cir.))per curiam); Trecker v. Scag, 747 F 2d 1176, 1179-80 (7th Cir. 1984), cert. denied, 105 S. Ct. 2140 (1985).

AFFIRMED.

Copy

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
(Submitted April 9, 1986)*

UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35

Before

Hon. HARLINGTON WOOD, JR., Circuit Judge
Hon. JOHN L. COFFEY, Circuit Judge
Hon. KENNETH F. RIPPLE, Circuit Judge

DONALD G. TRACY,
Plaintiff-Appellant,
No. 85-2820
vs
NATIONAL BANK OF DETROIT, WILLIAM BALDWIN, DAVID M. DAVIS, 5 JOHN DOES, and 5 JANE DOES,
Defendants-Appellee.

Appeal from the United States District Court for the Western District of Wisconsin
No. 85-C-898
JOHN C. SHABAZ, Judge

This matter comes before the court for its consideration of the "MOTION FOR LEAVE TO FILE INSTANTER A PETITION FOR REHEARING" filed herein on June 10, 1986 by plaintiff-appellant.

Appellant offers no explaination for the lateness of his petition. Furthermore, an examination reveals that it lacks arguable merit. accoedingly,

IT IS ORDERED that said motion is DENIED.

APPENDIX D

NOTICE OF COMMON LAW
WRIT OF PROHIBITION
FROM A JUDGMENT AND
ORDER OF THE APPEAL
COURT

DONALD G. TRACY,
Plaintiff-Appellant,
-vs- No. 85-2820
NATIONAL BANK OF DETROIT
WILLIAM BALDWIN, DAVID M.
DAVIS, 5 JOHN DOES and
5 JANE DOES,
Defendant-Appellee.

NOTICE IS HEREBY given that Donald Tracy, plaintiff above named, hereby is filing a Notice of Common Law Writ of Prohibition to the United States Supreme Court from the final judgment and order entered in htis action on May 13, 1986.

Dated this 7th day of July, 1986.

Donald G. Tracy, SUI JURIS
P.O. Box 1935
Janesville, Wi 53546

APPENDIX E

Section 3. Non-Alienation of Benefits

The pension fund shall not in any manner be liable for or subject to the debts or liability of any employee, seperated employee, retired employe, pensioner or surviving spouse. NO RIGHT, BENEFIT, PENSION OR SUPPLEMENT AT ANY TIME UNDER THE PLAN SHALL BE SUBJECT IN ANY MANNER TO ALIENATION, SALE, TRANSFER, ASSIGNMENT, PLEDGE OR ENCUMBRENCES OF ANY KIND EXCEPT IN ACCORD WITH PROVISIONS OF A QUALIFIED DOMESTIC RELATIONS ORDER AS DEFINED BY THE RETIREMENT EQUITY ACT OF 1984.
If any person shall attempt to, or shall, alienate, sell, transfer, assign, pledge or otherwise encumber accrued rights, benefits, pensions or supplements under the Plan or any part thereof, or if by reason of bankruptcy or other event happening at any time such benefits would otherwise be received or enjoyed by anyone else, the Corporation in its discretion may terminate the interest of such employe, pensioner or surviving spouse, his or her spouse, children or other dependents, or any of them as the Corporation may instruct; provided, however, that any pensioner, or surviving spouce, entitled to a monthly benefit under the Plan;

Copy

AFFIDAVIT, DECLARATION & FILING
OF
A NATURAL UNITED STATES CITIZEN
STATE OF WISCONSIN ]
COUNTY OF ROCK ] Affirmed

I, the undersigned, a Free White Citizen of the State of Wisconsin, of lawful age and competence, hereby affirm and declare that:

1. This is to certify the existence of my Person, as a Free White Citizen of Wisconsin; and that this certification is a written expression that corresponds to my Real Natural Person, in fact Donald Tracy, the undersigned, to which this factual written Expression of my Natural Person is subject;

2. My person, a Free White Citizen, has existed by demonstration of the thoughts, words and deeds as a Natural Person, from at least as early a date as August 9, 1931.

3. My being a Free White Wisconsin Citizen and thereby a united STates Citizen (as defined in the concuring opinions of DRED SCOTT v. SANFORD 12 How. 393) bears witness of the responsible attitudes, and hence the Natural Authority and Inalienable/Unalienable Rights of my said Real and Natural Person; and the inheritance of the heritage of my forefathers as a Co-Heir to the Preamble to the United States Constitution.

4. This written Expression of my NATURAL Citizenship by my forefathers heritage, may be summoned as evidence of my natural status, in part and/or in whole upon suffivient and lawful cause;

5. I am not a Corporate entity nor am I seeking any escape from natural liability (ies), and hence, need not be policied by the State, pursuant to the maritime jurisdiction of the de facto 14th Amendment to the United States Constitution; I am responsible for my own actions;

6. I, a United States Citizen de jure as defined in the concuring opinions of DRED SCOTT v. SANFORD supra, a Free White person, but not a de facto corporate State created creature, bear witness of my Real Natural Person's principals, motives and intents establishing the fact that I, a Real Natural Citizen have devoted a significant portain of my life to understand the difference between the concepts of Right and Wrong.

7. By no process other than the due process of the Organic Constitutional and Commom Law, can any governments demand or establish any maritime privileges or license, relative to myself, a Real Natural Citizen, acceptance of the de jure Citizen under Common Law, or instruments of the State for the purposes of Civilized Corporation to the

contrary notwithstanding, nor can any prejudicing of my Liberty, as a Real Natural Citizen, without my expressed and informed consent,

8. Violation of my Liberty as a Real Natural Citizen to the Organic Law, without full consideration of my Real Natural person's testimony and presentation of my citizenship in the common law jurisdiction of the State of Wisconsin, shall be deemed grounds for a Cause at (Organic) Constitutional/Common Law, to recover proper attention to my lawful status by a process of Distress Infinite, and shall be dealt with as Mixed War between the common law and maritime jurisdiction now operating within the body of the United States; and remidied by what ever course of action may be necessary and lawful, taking into consideration the moral gravity of the deprivations in the particular instance;

9. My intent is to be the Free, Lawful Natural, United States Citizen de jure which I am in fact and law, and being a Free White Person, to lay claim to my God given Rights, the Original United States Constitution (1787) including the Preamble and its Bill of Rights (1791), to redress grievances at the Common Law (de jure) upon which the Bill of Rights was based, to re-establish de jure government; i.e. the Republic of the United States, and hold the foregoing inviolate;

10. Therefore, this Real Natural United States Citizen, is of the Sovereign Body of the United States (DRED SCOTT v. SANFORD) supra, and this my Expressed Natural Person bears witness thereof;

11. The statements and information contained herein are true and correct to the best of my knowledge; are set forth for cause, and the signature herein is the voluntary act of my own hand.

FURTHER AFFAINT SAITH NOT.

Sbuscribed and affirmed this 25th day of June, 1986.

_____

Real Natural United States
Citizen, de jure

We, the undersigned, witness this day that the one known to us to be the above signator did personally appear before us and upon affirmation execute and affix the above signature hereto.

_____, an inhabitant of the State of Wisconsin

_____, an inhabitant of the State of Wisconsin

_____, an inhabitant of the State of Wisconsin

Omitted on alienated checks

GENERAL MOTORS CORPORATION

PENSION TRUST GENERAL MOTORS HOURLY-RATE EMPLOYES PENSION PLAN PURSUANT TO THE AGREEMENT BETWEEN GENERAL MOTORS AND UAW

932
720

No. 6916533

DATE
07-01-85

**********NINE HUNDRED THIRTY-THREE AND 98/100 DOLLARS

PAY TO THE ORDER OF
DONALD G TRACY
PO BOX 1935
JANESVILLE WI 53547

AMOUNT
$****933.98

RETIREMENT ID NO. 19027-R396260983

NATIONAL BANK OF DETROIT

NATIONAL BANK OF DETROIT
TRUSTEE

⑈6916533⑈ ⑆072000326⑆ 080⑈01⑈

APPENDIX G

Replaces #7752704 dtd 11-1-85

GENERAL MOTORS CORPORATION

Hourly Rate Employes Pension Plan

9-32
720

No.6944309

VOID AND WITHOUT RECOURSE IF NOT PRESENTED WITHIN 90 DAYS FROM DATE

NOT PAYABLE PRIOR TO

DATE
11-1-85

AMOUNT
$**433.33*

PAY TO THE ORDER OF
Donald G. Tracy
P. O. Box 1935
Janesville, WI 53547

RETIREMENT I.D. NO. R396260983

Darlene White

NATIONAL BANK OF DETROIT
TRUSTEE

NATIONAL BANK OF DETROIT

⑈6944309⑈ ⑆072000326⑆ 080⑈01⑈

APPENDIX H